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circumstances, the rate fixed is sufficient to yield reasonable compensation, *Minnesota Rate Cases*, 230 U. S. 352, 473; *Missouri Rate Cases*, 230 U. S. 474, 508.

CONSTITUTIONAL LAW — TRIAL BY JURY — INFRINGEMENT OF RIGHT BY PARTIAL NEW TRIAL. — After verdict in the Federal District Court for damages for personal injuries, the plaintiff was allowed a new trial on the sole issue of damages. The verdict on the restricted issue was rendered, and judgment was entered thereon. *Held*, that a partial new trial is unconstitutional. *McKeon v. Central Stamping Co.*, 264 Fed. 385 (C. C. A.).

For a discussion of this case, see NOTES, p. 72, *supra*.

CONSTITUTIONAL LAW — WHO CAN SET UP UNCONSTITUTIONALITY — WHETHER PUBLIC OFFICIAL HAS SUFFICIENT INTEREST. — The defendant, Secretary of State for North Dakota, refused to receive and file an application tendered by the plaintiff to take advantage of a state corporation statute. The plaintiff petitioned for mandamus to compel the defendant to accept and file the application. The defendant rested his case on the alleged unconstitutionality of the statute, as affecting adversely the rights of minority stockholders. *Held*, that the defendant cannot avail himself of this defense. *Mohall Farmers' Elevator Company v. Hall, Secretary of State*, 176 N. W. 131 (N. D.).

The court will not listen to an objection to the constitutionality of a statute, made by one whose rights are not directly affected thereby. *Hooker v. Burr*, 194 U. S. 415. See 21 HARV. L. REV. 438. Hence, it has been said by some courts, in a mandamus proceeding to enforce the performance of a statutory ministerial duty by an administrative officer, he cannot question the constitutionality of the statute involved. *Franklin County Comrs. v. State*, 24 Fla. 55, 3 So. 471; *Smyth v. Tilcomb*, 31 Me. 272. But the defense is allowed when, it is said, the officer will violate his duty under his oath of office, or otherwise render himself personally liable, by acting under a void statute. *State v. Clausen*, 65 Wash. 156, 117 Pac. 1101; *State v. Wheatley*, 113 Miss. 555, 74 So. 427. It is fundamental, however, that an unconstitutional act is not a law, and binds no one. *Marbury v. Madison*, 1 Cranch (U. S.) 137. And where there is no law there is no ground for compelling the officer to act; hence unconstitutionality should be a good defense to any proceeding to enforce a statute by mandamus. *Brandenstein v. Hoke*, 101 Cal. 131, 35 Pac. 562; *State v. Candland*, 36 Utah, 406, 104 Pac. 285; *State v. Tappan*, 29 Wis. 664. Furthermore, it would seem that any act done by an officer in pursuance of an unconstitutional statute would be a violation of his duty under his oath to support the Constitution. See *Denman v. Broderick*, 111 Cal. 96, 99, 43 Pac. 516, 518; *Rhea v. Newman*, 153 Ky. 604, 607, 156 S. W. 154, 156. However inconvenient it may be to have petty administrative officials constantly questioning the statutes under which they are ordered to act, it seems that their right to do so must be conceded.

CONSTRUCTIVE TRUSTS — SUBROGATION — RIGHTS OF LENDER AGAINST PREVIOUSLY MORTGAGED PROPERTY. — An owner of certain personal property incumbered it with two successive chattel mortgages, both of which were duly recorded. He then represented to the plaintiff that the property was unincumbered. Plaintiff thereupon loaned him a sum of money and took an unsecured note in return. With this money the mortgagor paid off part of the first mortgage. The mortgagor having died, and all the creditors being before the court in a suit to dispose of the property, plaintiff requested that he be subrogated, to the extent of this payment, to the rights of the first mortgagee. *Held*, that the request be refused. *Southern Trust Co. et al. v. Garner et al.*, 223 S. W. 369 (Ark.).

Where one's property is wrongfully acquired by another, equity will impose